SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

CHRISTIAN HUUS, LIBELLANT-APPELLANT,

against

NEW YORK AND PORTO RICO STEAMSHIP COMPANY, RESPONDENT-APPELLEE.

BRIEF FOR RESPONDENT-APPELLEE.

WILLIAM EDMOND CURTIS,
Proctor for Appellee,
39 Broad Street, New York City.

F. KINGSBURY CURTIS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

Brief for Respondent-Appellee.

CHRISTIAN HUUS, LIBELLANT-APPELLANT, AGAINST NEW YORK AND PORTO RICO STEAMSHIP COMPANY, RESPONDENT-APPELLEE.

STATEMENT OF THE CASE.

This action was brought by libellant to recover spoken pilotage, amounting to the sum of $74.34. The United States district court of the southern district of New York dismissed the libel with costs (transcript of record). From such decree the libellant appealed to the circuit court of appeals, which court, without hearing the case, certified the questions involved to the Supreme Court of the United States. The parties agreed that the following are the facts:

Libellant, on the twenty-fifth day of June, 1900, offered his services as Sandy Hook pilot to the master of the American-built steamship *Ponce*, hailing from New York and belonging to the New York and Porto Rico Steamship Company, a corporation organized under the laws of the State of New York, to take such vessel into the harbor of New York by way of Sandy Hook—the said vessel being at such time bound from the port of San Juan in the island of Porto Rico. Said libellant was a Sandy Hook pilot, duly licensed under the laws of the State of New York, and competent to act as such.

He was the first and only pilot offering his services.

The master of the vessel declined the service of such pilot, and himself brought his vessel into the port of New York by the way of Sandy Hook.

The aforesaid amount is the regular spoken pilotage prescribed by statute for vessels of the draught of the *Ponce*, and such amount was demanded from the owner of the vessel and payment thereof refused.

The said steamship *Ponce* was at the time in question enrolled under the laws of the United States, *and licensed to be employed in carrying on the coasting trade*, and her master was duly licensed to act as a pilot in the bay and harbor of New York by the inspectors of steamboats under the laws of the United States.

The said vessel at the times mentioned was engaged in trade between the island of Porto Rico and the port of New York, and laden with a cargo of merchandise shipped at San Juan and including sugar for delivery at New York.

The said vessel at the times mentioned *was not a registered vessel* and was sailing under the license aforesaid. (Transcript of record.)

The appellee contends that upon the above-agreed facts no pilotage is due to the libellant and in support of such contention respectfully submits the following "points."

POINTS.

POINT I.

The New York statute under which the libellant claims "spoken pilotage" expressly excepts vessels "licensed and engaged in the coasting trade" from State pilotage charges; respondent's vessel, the "Ponce," was so licensed and engaged, and is therefore excepted from the act upon which libellant relies.

POINT II.

Congress has emphatically prohibited any State from levying pilot charges upon any coastwise seagoing steam vessel under the control of a pilot licensed by the inspectors of steamboats; the "Ponce" was a coastwise seagoing steam vessel and licensed for the coasting trade and was under control of a pilot having a license from said inspectors, and therefore the Federal statute protects her from compulsory pilotage claimed by virtue of any State statute.

POINT III.

Even disclaiming the special exemptions and immunities of a licensed steam vessel engaged in the coasting trade, and studying only the naked language claimed by appellants to impose compulsory pilotage charges upon the vessel of the respondent, no words can be found in the New York act subjecting the "Ponce," or any other licensed American steam vessel, to compulsory pilotage unless she be proceeding "from a foreign port."

It is submitted that San Juan, Porto Rico, whence she was returning to her home port, New York, was not upon June 25, 1900, a foreign port, but was a port of the United States; that, therefore, it is immaterial what adjective finally be applied to trade between Porto Rico and New York, whether it be held coasting trade or otherwise, for the reason that prior to June 25, 1900, the port of San Juan, Porto Rico, became an American port.

POINT IV.

An examination of the cases and decisions cited by appellant's counsel as opposed to the decision of Judge Brown, from which appellant appeals to this court, shows that they are based on facts and questions wholly irrelevant to the matter under discussion here.

POINT V.

None of the points contended for by the counsel for the appellants answer the convincing arguments of Judge Brown's decision.

POINT VI.

It is respectfully submitted that the libel was rightfully dismissed, with costs, for the following reasons:

1. That Porto Rican ports have not been foreign ports since May 1st, 1900.

2. That vessels engaged in trade between Porto Rican ports and other ports of the United States are engaged in the coasting trade in the sense

in which those words are used in the statutes of the State of New York regulating pilotage.

3. That vessels engaged in trade between Porto Rican ports and other ports of the United States are coastwise steam vessels in the sense in which those words are used in section 4444 of the Revised Statutes of the United States.

POINT I.

The New York statute under which the libellant claims "spoken pilotage" expressly excepts vessels "licensed and engaged in the coasting trade" from State pilotage charges; respondent's vessel, the "Ponce," was so licensed and engaged, and is therefore excepted from the act upon which libellant relies.

The subject of pilots and pilotage in the harbor of New York is regulated by chapter 29 of the New York Consolidation act. This act, section 2119, provides when vessels entering by way of Sandy Hook must take State pilots, and is the statute under which the libellants make claim. It is in part as follows:

> "*No master of any vessel navigated under a coasting license and employed in the coasting trade by way of Sandy Hook, shall be required to employ a licensed pilot when entering or departing from the harbor of New York.* * * *
>
> "All masters of foreign vessels and vessels from a foreign port, and all vessels sailing under register, bound to or from the port of New York by the way of Sandy Hook, shall take a licensed pilot; or, in case of refusal to take such pilot, shall himself, owners, or consignees, pay the said pilotage as if one had been employed; and such pilotage shall be paid to the pilot first speaking or offering his services as pilot to such vessel. * * *
>
> "*This section shall not apply to vessels propelled wholly or in part by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.*"

Nothing can be clearer than the class of vessels *to* which the above statute *does not apply*. So careful is the act to state the limits of its application that it both begins and ends with a statement of what is excepted from its operation:

> "No master of any vessel navigated under a coasting license and employed in the coasting trade by way of Sandy Hook shall be required to employ a licensed pilot when entering or departing from the harbor of New York." So the section begins.
>
> "This section shall not apply to vessels propelled wholly or in part by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade." Thus the section ends.

The clauses of the New York statute are thus dwelt upon and repeated, because they seem to counsel at the outset to determine adversely to the libellants' claims the whole matter under discussion.

It appears from the agreed statement of facts that the *Ponce* was at the times in question (1) "a vessel navigated under a coasting license;" (2) "propelled wholly or in part by steam;" (3) "owned or belonging to citizens of the United States and (4) licensed * * * (for) the coasting trade."

The only question remaining under the act is whether she was "*engaged*" or "employed" "*in the coasting trade*," as well as "*licensed*." If she was so engaged, her exemption from State pilotage under the above statute is complete.

The first matter to consider, therefore, is what is the meaning of *coasting trade* as used in connection with the navigation laws of the United States.

The appellant claims that coasting trade is "trade along the coast," and that only.

The *appellee* claims:

> "*Coasting trade is the carrying trade between any two ports of the United States; and its essential attribute is that it can be carried on only by American vessels.*"

The appellee also contends that in international law, as well as statutory law, the foregoing is the correct and sound definition.

An examination of the acts of Congress shows that our system of navigation laws divides all navigation into three classes, and only three, namely:

First.—Foreign trade.

Second.—Coasting trade.

Third.—Fisheries.

"Fishery" needs no definition.

In "foreign trade" American vessels and vessels of all nations compete on equal terms.

The privileges of the coasting trade are, by the policy of our laws, expressly reserved to vessels of the United States, and such reserved and protected trade is known as the "coasting trade." The same is true under the laws of most of the civilized nations of the earth.

Coasting trade might accurately be defined as that trade from which foreign vessels are barred by section 4347 of the Revised Statutes of the United States, to wit, trade from one port of the United States to another port of the United States.

> § 4347. "No merchandise shall be imported (transported), under penalty of forfeiture thereof, from one port of the United States to another port of the United States, in a vessel belonging wholly or in part to a subject of any foreign power; and the transportation of merchandise in any such vessel or vessels from one port of the United States to another port of the United States via any foreign port shall be deemed a violation of the foregoing provision."

The correct usage and significance of the terms,

> "Coasting trade,"
> "Coastwise trade," etc.,

in the United States statutes can in no way be better exemplified than by a reference to the volume entitled,

> "Navigation Laws of the United States,"

issued by the Bureau of Navigation of the Treasury Department, edition of 1899.

The American statutory usage can probably be better seen from this publication than from the dictionaries.

The section just cited at page 224 of said volume bears the caption,

"*Foreign vessels barred from coasting trade.*"

Again, section 4311, Revised Statutes of the United States, declares that vessels enrolled and licensed,

> "and no others shall be deemed vessels of the United States, entitled to the privileges of vessels employed in the coasting trade."

Showing that the coasting trade is that trade in which only our own vessels can engage.

With this should be compared section 4337 of the Revised Statutes:

> § 4337. "If any vessel, enrolled or licensed, shall proceed on a *foreign* voyage without first giving up her enrollment and license to the collector of the district comprehending the port from which she is about to proceed on such voyage, and being duly registered by such collector, every such vessel, together with her tackle, apparel, and furniture, and the merchandise so imported therein, shall be liable to seizure and forfeiture."

It will be seen, therefore, that although the statutes of the United States do not supply statutory definitions of the words "coasting trade" and "foreign" trade, they define with great precision and exactness that trade which a coasting license embraces and which a foreign boat can not enter, and that trade which a coasting license does not embrace and which a register alone covers, and the penalty of forfeiture in each case indicates that the difference is practical and not dialectic.

In this connection, see also the caption on page 224 of the Navigation Laws, as published by the Bureau of Navigation, "*Foreign vessels on coasting voyages*," which is a transcript of section 4367 of the Revised Statutes of the United States. It appears from this that a vessel is on a coasting voyage when "bound from a district in the United States to any other district within the same."

It is to be noted that, as hereinafter more particularly set forth, Porto Rico has been by statute and designation created a customs district of the United States.

The next caption in said volume is entitled "*Penalties for violation of coasting laws*," and a vessel "found trading between district and district, or between different places in the same district," appears to be the definition of a vessel engaged in the coasting trade and subject to the "coasting laws."

Again, at page 223 of the said Navigation Laws of the United States, section 275, under title, "*Registered vessels in the coasting trade*," occur the following words:

> "Whenever any vessel of the United States, registered according to law, is employed in going from any one district in the United States to any other district," etc.,

indicating that such vessel is engaged in the coasting trade.

Examples might be multiplied, but the foregoing sufficed to show that trade between two foreign ports, or between an American port and a foreign port, trade which is open to the world, is "foreign trade," under our system of navigation laws; and that trade between

any two points of the United States, whether they be upon the Great Lakes or navigable rivers, or upon the seacoast, or, as will be later seen, between Alaska and the United States, and Hawaii and the United States, or Porto Rico and the United States, to wit, trade which is reserved exclusively for vessels of the United States, in which foreign vessels can not compete or engage, is "coasting trade" or "coastwise trade."

It may, therefore, safely be said that the coasting trade of the United States is trade carried on between two points within the same collection district of the United States, or between two points within different districts of the United States.

In other words, "coasting trade" includes all trade between any two ports of the United States, and the "benefits of the coasting trade" mean all the benefits, protection, and exemptions assured by Congress to American vessels engaged in commerce between American ports.

Congress nowhere "*defines*"—it only "*describes*"—the coasting trade, and always describes it by words equivalent to the foregoing.

The touchstone of the "*coasting trade*" is that it is the domestic trade reserved to vessels sailing or entitled to sail under a coasting license; the touchstone of "*foreign trade*" is that *all* vessels may compete for it, because the jurisdiction of the United States extends to but one of the ports.

(The licensing of vessels is regulated by section 4321 of the United States Revised Statutes, found at page 42 of the 1899 volume of the Navigation Laws above referred to; it is cited at length in the decision of Chief Justice Marshall, elsewhere in this brief.)

The treaties of the United States best illustrate the correctness of the above definition.

For a specific definition of "coasting trade," see the treaty with the Netherlands, of August 26th, 1852, of which Article IV reads as follows:

ARTICLE IV.

Coasting trade and fisheries excepted.

"The present arrangement does not extend to the coasting trade and fisheries of the two countries respectively, which are exclusively allowed to national vessels, it being moreover understood that in the East Indian Archipelago of the Netherlands the trade from island to island is considered as coasting trade, and likewise in the United States, the trade between their ports on the Atlantic and their ports on the Pacific; and if at any time either the Netherlands or the United States shall allow to any other nation the whole or any part of the said coasting trade, the same trade shall be allowed on the same footing and to the same extent to the other party. It being, however, expressly understood and agreed that nothing in this article shall prevent the vessels of either nation from entering and landing a portion of their inward cargoes at one port of the other nation, and then proceeding to any other port or ports of the same to enter and land the remainder, nor from preventing them in like manner from loading a portion of their outward cargoes at one port and proceeding to another port or ports to complete their lading, such landing or lading to be done

under the same rules and regulations as the two Governments may respectively establish for their national vessels in like cases."

In the first treaty with Great Britain, Article XIII, and in the commercial treaty with Great Britain of 1815, in Article III, the words "*coasting trade*" are used in this sense of a trade between two points of the same dominion, which is reserved exclusively for the domestic vessels of that dominion, and an examination of the map discloses that "trade along the coast" would be an absurd definition for the trade thus embraced.

The provisions of the treaty of 1815 are as follows:

ARTICLE III.

"*American trade with British East Indies.*

"His Britanick Majesty agrees that vessels of the United States of America shall be admitted and hospitably received at the principal settlements of the British dominions in the East Indies, *videlicet*—Calcutta, Madras, Bombay, and Prince of Wales Island, etc."

Coasting trade in the British East Indies.

"It is also understood that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of *the coasting* trade of the said British territories."

Thus much of the treaty, according to the appellant's contention, would allow the American vessels to trade between the ports named if either was on an island or both were not on the same coast, an evident absurdity in view of the language which follows:

"But the vessels of the United States having, in the first instance, proceeded to one of the said principal settlements of the British dominions in the East Indies, and then going with their original cargoes, or part thereof, from one of the said principal settlements to another, shall not be considered as carrying on the coasting trade."

The prohibition against "*coasting trade*" would of course include such a voyage were it not thus excepted, and we find that by U. S. R. S., § 4347, and by all our treaties, the same exclusion of foreign vessels from the carrying trade "from one port of the United States to another port of the United States" is recognized, and the same exception in favor of a foreign vessel carrying only its own original cargo is allowed.

§ 4367 and § 4368 of U. S. Revised Statutes provide the regulations for such coasting voyages by foreign ships, and are found in "Navigation Laws of the U. S., page 224 (1899), section 279, under head of "*Foreign vessels on coasting voyages.*"

The words of the commercial treaty of 1815 quoted above are identical with the words of the first treaty with Great Britain. So it is clear that from the date of our independence "coasting trade" as a generic term meant trade between two ports of the same dominion, even if they were some on islands and some on the mainland.

See also treaty with Italy, dated February 26, 1871 (Treaties of the United States).

"ARTICLE VII.—Vessels of the United States arriving at a port of Italy, and reciprocally vessels of Italy arriving at a port of the United States, may proceed to any other port of the same country, and may there discharge such part of their original cargoes as may not have been discharged at the port where they first arrived. It is, however, understood and agreed that nothing contained in this article shall apply to the coastwise navigation, which each of the two contracting parties reserves exclusively to itself."

Can anyone doubt that coastwise includes Sicily or Porto Rico?

Coasting trade is used as domestic trade from which foreign vessels are excluded in numerous treaties:

Denmark, August 10, 1826, article 2.
Austria, August 27, 1829, Article VII.
Belgium, March 8, 1875, Article IV.
Bolivia, May 13, 1858, article 3.
Brazil, December 12, 1828, article 3.
Colombia, December 12, 1846, article 3.
Costa Rica, July 10, 1851, Article II.
Greece, December 22, 1837, Article V.
Haiti, November 3, 1864, article 12.
Honduras, July 4, 1864, Article II, par. 3.
Japan, November 22, 1894.
Mecklenburg-Schwerin, article 2.
Netherlands, August 26, 1852, Article IV.
Nicaragua, June 21, 1867, Article II.
Peru, August 31, 1887, Article VII.
Prussia, May 1, 1828, Article VII.
Russia, December 18, 1832, Article VII.
Sweden and Norway, July 4, 1827, Article VI.

Japan being a series of islands, certainly trade from island to island is as much coasting trade as if it were "along the coast."

Without here discussing whether trade with Porto Rico did not become coasting trade immediately upon the exchange of ratifications of the treaty with Spain on April 11, 1899, it is submitted that by virtue of section 9 of chapter 191 of the Laws of 1900, approved April 12, 1900, commonly known as the "Porto Rico Act," trade with Porto Rico became coasting trade beyond any question. That section provides:

"That the Commissioner of Navigation shall make such regulations, subject to the approval of the Secretary of the Treasury, as he may deem expedient for the nationalization of all vessels owned by the inhabitants of Porto Rico on the eleventh day of April, eighteen hundred and ninety-nine, and which continued to be so owned up to the date of such nationalization, and for the admission of the same to all the benefits of the coasting trade of the United States; and *the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.*"

We have here a positive enactment of Congress that trade with Porto Rico is coasting trade, and is to be regulated as trade between two great coasting districts.

This is notice to all the world that only American vessels can engage in it.

The libellants maintain that, despite these provisions, the trade with Porto Rico is not coasting trade. In other words, that Congress has not the power to define what shall and what shall not be considered coasting trade.

It has never been questioned that Congress has complete power over the subject of pilotage and that any State regulation thereof in conflict with a regulation of Congress is invalid (see *Cooley* vs. *Portwardens*, 12 How., 299; *Spraigue* vs. *Thompson*, 118 U. S., 90), and that is not questioned here, but the power to define coasting trade is questioned.

As Congress has supreme power over commerce and navigation, it must necessarily have power to define the terms it uses in regulating such navigation, and to classify vessel trade between different places as it sees fit, and it is well settled that the provisions of the Federal statutes, and not any process of reasoning, decide what is to be regarded as coasting trade.

In *Gibbons* v. *Ogden* (9 Wheat., at page 214) Chief Justice Marshall said:

> "The coasting trade is a term well understood. The law has defined it; all know its meaning perfectly. The act describes, with great minuteness, the various operations of a vessel engaged in it." * * *

In *Steamboat Co.* vs. *Livingston* (3 Cow., at page 747), Chief Justice Savage said:

> "This brings me to the inquiry, What is the coasting trade? The answer to this inquiry is to be found in the laws of Congress. * * * This act contains, in the first section, a prohibition to all vessels except those authorized as is therein provided from carrying on the coasting trade. * * * This, then, is the definition given by Congress to the term, 'the coasting trade,' etc."

The Chief Justice then quotes the language of Marshall just cited, and later on he says: "According to the definition of coasting trade, as extracted from the act of Congress," * * * showing that Congressional usage was the criterion.

In both of these cases the question was as to whether the exclusive right to navigate waters of New York with steam vessels, given to Livingston and Fulton, was valid as against vessels licensed by the United States Government to be engaged in the coasting trade, and in neither case was there any suggestion that the true definition of the coasting trade was to be found anywhere other than in the acts of Congress.

And it is certainly a sound principle that when Congress, under the Constitution, has absolute power over the whole subject of commerce and navigation between different States and Territories and foreign countries, the legislature and courts of the State should accept such definitions of "coasting trade" as the Federal Government shall give. The New York State statute in using the words "coasting trade" used a general term applicable to anything which might thereafter become "coasting trade," and it is as extravagant to claim that the application of the words to trade with Porto Rico is in contravention of the intent of the State legislature as it would be to claim that the regulation by Congress of trade with an Indian tribe living in territory not originally subject to our sovereignty would be beyond the power given to Congress by the Constitution to regulate commerce "with the Indian tribes."

In *Steamboat Co.* vs. *Livingston*, *supra*, it was held that trade between Albany and New York was coasting trade within the meaning of the act of Congress, and in *Ravesies* vs. *U. S.* (37 Fed. Rep., 447) it was held that trade on navigable rivers of the United States was coasting trade. Likewise, in *Alameda* vs. *Neal* (32 Fed. Rep., at page 333), Justice Field characterized vessels plying between San Francisco and Alaska as "coasting."

These cases and the treaties and statutes cited clearly show that the term "coasting trade" is not necessarily confined to vessels proceeding along the coasts of the United States, and are an answer to any argument which may be made on the ground that the voyage to Porto Rico is not *along the coast* of the United States.

Congress a second time, in chapter 600, Statutes of 1899–1900, recognizes trade between Porto Rico and the United States as coasting trade, the title of that act being:

> "An act to facilitate the entry of steamships engaged in the *coasting trade* between *Porto Rico and* the Territory of Hawaii and the United States."

The Treasury Department has obeyed the only possible construction of the Porto Rico act by granting enrollment and licenses to be employed in "*the coasting trade*" to the vessels of the New York and Porto Rico Steamship Company (Treasury decision 22232), and by ruling that vessels from Porto Rico are not now liable to tonnage duties (Treasury decision 22174), and that foreign vessels entering Porto Rico pay "tonnage taxes as provided by the laws of the United States."

Treasury decision 22232 answers so conclusively the arguments of the appellants that we quote it at length.

It is as follows:

TREASURY DECISION.

(22232.)

AMERICAN VESSELS IN TRADE WITH PORTO RICO.

American vessels in trade between the United States and Porto Rico may receive enrollment and license.

"TREASURY DEPARTMENT, BUREAU OF NAVIGATION,
"*Washington, D. C., May 16, 1900.*

"COLLECTOR OF CUSTOMS, *New York, N. Y.*

"SIR: Your letter of the 15th instant, concerning the letter of Messrs. McCammon & Hayden, attorneys for the New York and Porto Rico Steamship Company, in which they request a change in the documents of the vessels of said company from registers to enrollments and licenses, has been received. You state that—

"On the 10th instant Mr. H. T. Knowlton, of the steamship company named, made a similar request to this office, and was informed that in view of the Department decisions governing vessels in similar trade, his request could not be granted unless authorized by the Secretary of the Treasury. The Department decisions herein referred to are Treasury decision 2771 (April 24, 1876), wherein it is stated that the 'circuit court of the United States at Portland, Me., decided that * * * vessels trading between an Atlantic and a Pacific port are in the foreign trade.'

In a letter to this office dated April 7, 1892, the commissioner of navigation advised 'that to avoid any question which might arise under section 4337, Revised Statutes, should the vessel visit a foreign port, a register be obtained according to the usual course of procedure.' Treasury decision 14670, dated February 15, 1894, holds that 'an American vessel proceeding from Atlantic to Pacific ports in the United States' is bound on a foreign voyage; that such a voyage is chiefly in water not contiguous to the United States,' and it points out the fact that during such voyage vessels may be obliged to touch at intermediate foreign ports.

"Treasury decision 2771 refers to Revised Statutes, section 2514, and states that the circuit court of the United States at Portland, Me., has decided that, for the purposes of the statute, vessels trading between an Atlantic and a Pacific port are in the foreign trade.

"Treasury decision 14670 holds that an American vessel proceeding from Atlantic to Pacific ports in the United States 'is bound on a foreign voyage within the purview and for the purposes of Revised Statutes, section 4576.'

"Bureau letter of April 7, 1892, in which you are advised that, to avoid any question which might arise under section 4337, should the vessel visit a foreign port, a register be obtained, related to a vessel bound from a port on the Atlantic to a port on the Pacific.

"The Bureau is of the opinion that none of the decisions cited by you is applicable to American vessels engaged in the coasting trade between New York and Porto Rico, which, by the act approved April 12, 1900, is regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.

"You are authorized, upon application, to issue enrollments and licenses to vessels of the United States engaged in trade between your district and Porto Rico, at the same time advising applicants of the provisions of section 4337, Revised Statutes.

"Respectfully,

"EUGENE T. CHAMBERLAIN,
"*Commissioner.*"

The section 4337 above referred to has been already cited, and is as follows:

"§ 4337. If any vessel, enrolled or licensed, shall proceed on a foreign voyage without first giving up her enrollment and license to the collector of the district comprehending the port from which she is about to proceed on such voyage and being duly registered by such collector, every such vessel, together with her tackle, apparel, and furniture, and the merchandize so imported therein, shall be liable to seizure and forfeiture."

Moreover, the naval officer at San Juan, upon a controversy similar to that arising here, has notified respondents that the attorney-general of Porto Rico has delivered an opinion that respondent's vessels arriving at San Juan need not take local pilots, a portion of which is as follows:

"I am further of the opinion that a vessel engaged in the coasting trade with a licensed pilot attached to the vessel and on board, arriving at or clearing from Porto Rican ports, is not obliged to take a local pilot."

Congress has likewise, in section 4358 of the Revised Statutes, denominated trade with Alaska and its islands, which are no more a physical part of our coast than Porto Rico, "coasting trade," and provided, as in the case of Porto Rico, that it "shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts."

And, as already noted, Justice Field, in the case of *Alameda* vs. *Neal* (32 Fed. Rep., at page 333), characterized vessels plying between San Francisco and Alaska as "coasting."

Exactly the same language is used in chapter 339 of Statutes of 1899-1900, section 98 (the Hawaiian act) approved April 30, 1900, regarding trade with Hawaii, which it describes as "coasting trade."

The above decision of the Commissioner relating to trade with Porto Rico is in accordance with the cases cited and also with the earlier rulings of the Treasury Department with regard to vessels trading between Alaska and other parts of the United States, as appears from Treasury Decision 6106, which reads as follows:

TREASURY DEPARTMENT, *January 8, 1884.*

"SIR: In a communication to the Department of the 7th ultimo, you enquire whether a vessel under enrollment and license can trade between the district of Alaska and ANOTHER great coasting district on the Pacific coast, or whether she should not be under register.

"You are informed that a *register* is a document issued *exclusively* to vessels engaged in a *foreign* trade. Alaska is part of the United States, and vessels trading between that Territory and any other part of the United States require only an enrollment and license, though vessels under a register may enter the coasting trade and proceed from Alaska to California or Oregon. But vessels thus trading *require* no register, and vessels in the first instance take such a document only when about to enter a *foreign* voyage.

"Your attention is called to decision 5618 of the synopsis for 1883.

"Very respectfully, "H. F. FRENCH,
"*Assistant Secretary.*

"COLLECTOR OF CUSTOMS, *Sitka, Alaska.*"

If the Alaskan statute made Alaska "another great coasting district," the Porto Rico act certainly makes Porto Rico "another great coasting district," as the wording of each act is identical.

The provisions of section 4358, R. S., regulating trade with Alaska, are, as has been stated, reproduced *verbatim* in the provisions of section 9 of the Porto Rico act, so that this is a direct decision on the point at issue in these cases.

See also Treasury decisions 5618 and 19364, where vessels trading with Alaska are characterized "as coastwise vessels," and 18859, where trade with Alaska is referred to as "coastwise trade."

In these decisions various regulations of the trade between great coasting districts are applied to Alaska.

Later the Hawaiian trade was held to have been made coasting trade by virtue of the same verbiage in each case reproduced from the Alaskan statute, the Commissioner of Navigation deciding that:

"Trade between the United States and Hawaii will be carried on in registered or enrolled *and* licensed, or licensed *vessels of the United States only.*" (Treasury decision 22201, May 3, 1900.)

"Licensed" of course means provided with a *coasting* license.

Thus it is evident that when Congress in the Porto Rico act enacted that:

> "The coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States,"

it used the exact words of the Alaska act—words of well-known significance, which had for years been practically construed as constituting the trade to which they were applied "coasting trade," and giving it all the incidents and privileges of such trade.

In view of the origin and long-settled construction of the above language can anything be plainer than the legislative intent of Congress in the Porto Rico act?

It is true that Congress has not in so many words enacted that trade between Porto Rico and the United States *shall be and is* coasting trade, nor did it do so in any of the prior acts.

But if it be conceded for purposes of argument that the words of the act are not words of adequate description, and that the language does not purport to make trade with Porto Rico coasting trade in all respects, so as to exempt it from State pilotage, but only to subject it in general to Federal regulations applicable to enrolled boats, nothing more favorable to appellant results.

Such a construction of the act leads to a perfect *reductio ad absurdum*. Section 9 of the act already quoted, while providing for the "NATIONALIZATION" of vessels "owned by the inhabitants of Porto Rico" at the time of the execution of the treaty of Paris, likewise provides explicitly for the admission of said vessels to "all the benefits of the coasting trade of the United States."

An indubitably great, if not the greatest, "benefit" of the coasting trade is the exemption of a vessel engaged in it from compulsory State pilotage fees. This, to a small extent, offsets the higher rates of wages paid to both American captains and crews.

Can it be for a moment supposed that the Porto Rico act confers such a "benefit" as exemption from pilotage charges upon the vessels of the inhabitants of Porto Rico entering the port of New York, and, in the same breath, denies it to the vessels of citizens of the United States hailing from the port of New York on reentering their home port?

It is, however, an established principle of statutory construction that words in a statute describing a legal right or privilege as existing will be taken to create such legal right or privilege.

The words used in the Federal acts in various places, "The coasting trade between Porto Rico and the United States," describe in adequate terms the trade between Porto Rico and the United States, and, within the above-named principle, are tantamount to a legislative enactment that such trade shall be and is coasting trade.

In the case of *Gibbons* vs. *Ogden* (9 Wheat., 1) the Supreme Court held that the words shall be "entitled to the privileges of ships employed in the coasting trade" were an enactment authorizing the vessels described to carry on the coasting trade.

In the case of *Postmaster-General* vs. *Early* (12 Wheat., 136) an act of Congress in terms gave to the U. S. district court jurisdiction described as *concurrent* with the circuit court, but used no words

expressly conferring it upon the circuit court. In an action in the circuit court it was objected to the jurisdiction that no jurisdiction was in terms given to the circuit court by this act. Chief Justice Marshall said in answer to this objection:

> "The words are certainly not senseless. * * * They, perhaps, manifest the opinion of the legislature, that the jurisdiction was in the circuit court; but ought, we think, to be construed to give it, if it did not previously exist. Any other construction would destroy the effect of those words. The district court can not take cognizance concurrent with the circuit courts, unless the circuit courts can take cognizance of the same suits. For one body to do a thing concurrently with another is to act in conjunction with that other; it is equivalent to saying the one may act together with the other. *The phrase may imply that power was originally given to that other, but if, in fact, it had not been given, the words are capable of imparting it.* If they are susceptible of this construction, they ought to receive it, for otherwise they will be totally inoperative or will contradict the other parts of the sentence."

So in *County of Wilson* vs. *National Bank* (103 U. S., 770), the Supreme Court held that an act empowering a county to pay a subscription to railroad stock in county bonds carried with it by implication an implied power to the county to issue bonds, though no express power was given.

Likewise in *Wood* vs. *Wood* (54 Ark., 172), it was held that a statute providing that "the action for alimony or divorce shall be by equitable proceeding" * * * not only implies an opinion that an independent action existed, but manifests an intent that such action shall exist and be prosecuted by equitable proceeding."

It seems clear therefore, from all known rules of construction, that the Porto Rico act establishes the status of trade between Porto Rico and the United States as "*coasting trade*," whatever such trade may have been before that act was passed, and that vessels like the *Ponce*, licensed and engaged in that trade, are expressly excepted from pilotage under the exemption set forth in the words:

> "No master of any vessel navigated under a coasting license and employed in the coasting trade, by way of Sandy Hook, shall be required to employ a licensed pilot when entering or departing from the harbor of New York.
>
> "This section shall not apply to vessels propelled wholly or in part by steam owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade."

The *State of New York has*, therefore, itself adequately and explicitly excepted the *Ponce* from any liability or claim for compulsory pilotage.

The Federal statute of exemption to be considered in the next point is to the same general effect as State exemption.

POINT II.

Congress has emphatically prohibited any State from levying pilot charges upon any coastwise seagoing steam vessel under the control of a

pilot licensed by the inspectors of steamboats. The "Ponce" was a coastwise seagoing steam vessel and licensed for the coasting trade, and was under control of a pilot having a license from said inspectors, and therefore the Federal statute protects her from compulsory pilotage daimed by virtue of any State statute.

As has already been stated, the power of Congress on the subject of pilotage, when it once acts, is paramount. This has been held in various cases by the Supreme Court of the United States, and particularly in the case of *Spraigue* vs. *Thompson* (118 U. S., 90), where it was held by the Supreme Court that an act of the Georgia legislature imposing pilotage fees upon all *coasting vessels* except certain specified classes was unconstitutional as an attempted regulation of a subject of which Congress had taken exclusive control.

The Federal statutes prohibit any State from levying pilot charges upon coastwise steam vessels having a pilot duly licensed under the Federal laws, and require all such vessels when within harbors to take such a Federal licensed pilot.

The sections are as follows:

"Sec. 4401. All coastwise seagoing vessels, and vessels navigating the Great Lakes, shall be subject to the navigation laws of the United States, when navigating within the jurisdiction thereof, and all vessels, propelled in whole or in part by steam, and navigating as aforesaid, shall be subject to all the rules and *regulations* established in pursuance of law for the government of steam vessels in passing, as provided by this title; and *every coastwise seagoing steam vessel* subject to the navigation laws of the United States, and to the rules and *regulations* aforesaid, not sailing under register, shall, when under way, except on the high seas, *be under the control and direction of pilots licensed by the inspectors of steamboats.*"

"Sec. 4444. No State or municipal government shall impose upon pilots of steam vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by this title; *nor shall any pilot charges be levied by any such authority upon any steamer piloted as provided by this title;* and in no case shall the fees charged for the pilotage of any steam vessel exceed the customary or legally established rates in the State where the same is performed. Nothing in this title shall be construed to annul or affect any regulation established by the laws of any State, requiring vessels entering or leaving a port in any such State, *other than coastwise steam vessels*, to take a pilot duly licensed or authorized by the laws of such State, or of a State situate upon the waters of such State."

It is apparent from the sections above quoted that there is no conflict between the State and Federal laws regulating pilotage.

In fact, the State statute recognizes that the Federal statutes are paramount, and it is framed with the idea of subjecting to State pilotage only vessels not engaged in the coastwise trade.

The expression "coastwise steam vessels," used in the Federal statute, evidently means steam vessels engaged in the coasting trade, and in *Ravesies* vs. *U. S.* (37 Fed. Rep., 447), the court laid down the

general proposition that "in the statutes of the United States relating to commerce, navigation, and revenue, the words 'coasting trade' and 'coastwise trade' are used synonymously."

The only question open to discussion, therefore, regarding the application of the Federal statute to the case of the *Ponce* is whether the *Ponce* is a coastwise steam vessel, viz, a vessel engaged in the coasting trade, under the Federal act, whatever may be the opinion as to the meaning of "coasting trade," in the State act.

All of the arguments drawn from an examination of Congressional legislation and the recognized canons of construction, made under Point I in relation to the term "coasting trade" in the State statute, apply to the Federal statutes and indicate clearly that the *Ponce* was, at the times in question, a vessel engaged in the coasting trade and therefore expressly exempt, under the Federal laws, from the State pilotage charges.

Moreover, it is provided under the *Porto Rico act*, as has been noted, that "the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to trade between any two great coasting districts of the United States."

The *Ponce's* coasting license, according to the statutory form, contains an agreement not to engage in any other trade than the coasting trade (U. S. R. S., § 4321).

UNITED STATES OF AMERICA.

License of vessels of twenty tons or more for carrying on the coasting trade for one year.

(District of the city of New York, port of New York.)

In pursuance to Title L, "Regulation of vessels in domestic commerce," of the Revised Statutes of the United States, New York and Porto Rico Steamship Co., Inc., owner; Frederick R. Rohl, sec'y; and Frank E. Dyer master, agreeing that the steamship called the *Ponce*, burden 3,503 tons and hundredths gross 2,519 tons and hundredths net, as appears by her enrollment, issued at New York, N. Y., numbered 265, and dated May 31st, 1900, shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and said master having also sworn that this license shall not be used for any other vessel, or for any other employment than is herein specified, license is hereby granted for the said vessel called the *Ponce* of New York, N. Y., *to be employed in carrying on the coasting trade for one year from the date hereof*, and no longer.

Given under my hand and seal at the port of New York, in the district of the city of New York, this second day of June, 1900, in the year one thousand nine hundred.

(Signed) F. RAYMOND, [SEAL]
Deputy Collector of Customs.

(Signed) J. WELCH, [SEAL]
Deputy Naval Officer.

If trade with Porto Rico is not coasting trade, the net result of the license given to the *Ponce* for the purpose of engaging in that trade is a license which by its own terms forbids the licensee to carry on the trade for which the license is given.

This is another *reductio ad absurdum* resulting from any proposition that trade with Porto Rico is not coasting trade.

Furthermore, if trade between New York and Porto Rico is not "coasting trade," the *Ponce* is, under section 4337 of the Revised Statutes, above quoted, liable to seizure and forfeiture "for engaging in foreign trade while not under register," and this in spite of the fact that she is proceeding in good faith under a license granted for the very purpose of Porto Rican trade, by the direction of the Bureau of Navigation, in accordance with the mandatory provisions of the Porto Rico act.

The act of Congress of February 5, 1884, which established the Bureau of Navigation, provides as follows:

> CHAP. 221.—AN ACT TO CONSTITUTE A BUREAU OF NAVIGATION IN THE TREASURY DEPARTMENT.
>
> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be in the Department of the Treasury of the United States a Bureau of Navigation, under the immediate charge of a Commissioner of Navigation.
>
> "SEC. 2. That the Commissioner of Navigation, under the direction of the Secretary of the Treasury, shall have general superintendence of the commercial marine and merchant seamen of the United States, so far as vessels and seamen are not, under existing laws, subject to the supervision of any other officer of the Government. HE SHALL BE SPECIALLY CHARGED WITH THE DECISION OF ALL QUESTIONS RELATING TO THE ISSUE OF REGISTERS, ENROLLMENTS, AND LICENSES OF VESSELS; and to the filing and preserving of those documents."

It appears from section 2 of the foregoing act that the Commissioner of Navigation is "*specially charged with the decision of all questions relating to the issue of registers, enrollments, and licenses of vessels.*" The decision of the Commissioner granting a coasting license to the steamship *Ponce* was, therefore, a decision by an official clothed by Congress with the power of "*decision*" of the very questions of enrollment and license. The Commissioner who granted the coasting license to the *Ponce* was consequently in so doing acting in a judicial capacity. His decision is, therefore, entitled to the greatest consideration, and, like the decision of any other lawfully constituted tribunal, should not be disregarded in these actions unless it is shown beyond any reasonable peradventure to be an error.

In fact, if the pilots consider that in the exercise of a discretion committed to him by Congress the Commissioner of Navigation has erred, they should proceed directly, and not by collateral attack attempt to deprive his office of its statutory jurisdiction. He can not be heard here, although the basis of the whole navigation system be involved.

The decision of the Commissioner in the cases of the *Ponce* is in full harmony with the decision of the Treasury Department regarding trade with Alaska, and of the Commissioner regarding trade with the Hawaiian Islands. The decree prayed for by the appellants would overrule the uniform decisions of the tribunal clothed by Congress with authority to decide the very questions here involved.

The whole gist of appellant's contention, that the terms of the Porto Rico act are insufficient to cover the case of the *Ponce*, has already been passed upon by the United States Supreme Court in an old case.

The Porto Rico act provides:

> "The coasting trade between Porto Rico and the United States shall be *regulated* in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States."

We wish to call special attention to the use of the word "regulated" in this act.

This is the broadest term that could be used in declaring that every provision "of law applicable to such trade between two great coasting districts of the United States" should be applicable to the trade with Porto Rico, and is the most apt and accurate for declaring that no provision of local law of any State which would be inapplicable to a vessel engaged in "such trade between any two great coasting districts of the United States" should be applied to this trade with Porto Rico.

It is a reenactment of all the laws as to coastwise vessels and an application of them to this trade.

It is equivalent to declaring that no restriction of privilege, no qualification of complete commercial rights shall be imposed upon the vessel whose pilotage fees are now claimed which would not be imposed upon the same vessel had she sailed from any other great coasting district of the United States into the harbor of New York.

The meaning of the word "to regulate" navigation, "to regulate" commerce, "to regulate" trade was once and forever settled in the United States by the decision of its Supreme Court as set forth by Chief Justice Marshall in the case of *Gibbons* vs. *Ogden* (9 Wheat., 1).

The legislature of the State of New York had given to Ogden and Fulton certain privileges of steam navigation upon the Hudson River and had endeavored to exclude from equal privileges a certain vessel, the *Bellona*, holding a license almost *verbatim* the same as that under which the *Ponce* claims immunity from compulsory pilotage.

Chief Justice Marshall approved her owner's contention as follows:

> "It has been contended by the counsel for the appellant that, as the word 'to regulate' implies in its nature full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were as well as to those which are altered. It produces a uniform whole which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated." (*Gibbons* vs. *Ogden*, 9 Wheaton, 1.)

The compulsory pilotage act is as much an attempt to *regulate*, and its application to the *Ponce* would be as obnoxious an attempt to *regulate* commerce as was the Ogden-Fulton monopoly, the Federal law having already provided the *Ponce* with a Federal licensed pilot.

But the New York statute on its face admits that it can not regulate the coasting trade, not because it is coasting trade, but because all regulation of trade of the port of New York with other countries, States, or Territories is under the exclusive regulation of Congress, and because when Congress has legislated as it has done as to pilotage all State regulations fall.

The question at issue here is not merely whether the *Ponce* is engaged in the coasting trade. The question is whether the *Ponce*

is engaged in such commerce, trade, or navigation as the Congress of the United States has declared shall have all the privileges and obligations of the coasting trade, and if Congress has so declared, the geographical or dialectic question of whether or not this is coastwise trade becomes unimportant.

Every word of the decision of Chief Justice Marshall as to the meaning of the sections of the so-called "coastwise act" became decisive of this case so soon as the expression "the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States" appeared upon the statute book.

Chief Justice Marshall in his decision (*Gibbons* vs. *Ogden*) discusses the force and effect of some of these sections in such language that no comment or remark could make it more clearly applicable to the case at bar.

He says:

"But we will proceed briefly to notice those sections which bear more directly on the subject.

"The first section declares that vessels enrolled by virtue of a previous law, and certain other vessels enrolled as described in that act, and having a license in force as is by the act required, 'and no others, shall be deemed ships or vessels of the United States, entitled to the privileges of ships or vessels employed in the coasting trade.'

"This section seems to the court to contain a positive enactment that the vessels it describes shall be entitled to the privileges of ships or vessels employed in the coasting trade. These privileges can not be separated from the trade and can not be enjoyed unless the trade may be prosecuted. The grant of the privilege is an idle, empty form, conveying nothing, unless it convey the right to which the privilege is attached, and in the exercise of which its whole value consists. To construe these words otherwise than as entitling the ships or vessels described to carry on the coasting trade would be, we think, to disregard the apparent intent of the act.

"The fourth section directs the proper officer to grant to a vessel qualified to receive it 'a license for carrying on the coasting trade,' and prescribes its form. After reciting the compliance of the applicant with the previous requisites of the law, the operative words of the instrument are, 'license is hereby granted for the said steamboat *Bellona*, to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.'

"*These are not the words of the officer; they are the words of the legislature, and convey as explicitly the authority the act intended to give, and operate as effectually, as if they had been inserted in any other part of the act than in the license itself.*

"The word 'license' means permission or authority, and a license to do any particular thing is a permission or authority to do that thing; and, if granted by a person having power to grant it, transfers to the grantee the right to do whatever it purports to authorize. It certainly transfers to him all the right which the grantor can transfer, to do what is within the terms of the license.

"Would the validity or effect of such an instrument be questioned by the respondent, if executed by persons claiming regularly under the laws of New York?

"This license must be understood to be what it purports to be, a legislative authority to the steamboat *Bellona* 'to be employed in carrying on the coasting trade for one year from this date.'

"It has been denied that these words authorize a voyage from New Jersey to New York. It is true that no ports are specified, but it is equally true that the words used are perfectly intelligible, and do confer such authority as unquestionably as if the ports had been mentioned. The coasting trade is a term well understood. The law has defined it, and all know its meaning perfectly. The act describes with greater minuteness the various operations of a vessel engaged in it, and it can not, we think, be doubted that a voyage from New Jersey to New York is one of those operations." (*Gibbons* vs. *Ogden*, 9 Wheaton.)

Change the word "Bellona" to "Ponce;" change the word "New Jersey" to "Porto Rico," and the decision stands as a decision of the case at bar, and it becomes evident that the "Ponce" could not be subjected to State pilotage regulations any more than any other vessel protected therefrom by the Federal statute against interference with coastwise steam vessels piloted by a Federal licensed pilot.

POINT III.

Even disclaiming the special exemptions and immunities of a licensed steam vessel engaged in the coasting trade, and studying only the naked language claimed by appellants to impose compulsory pilotage charges upon the vessel of the respondent, no words can be found in the New York act subjecting the "Ponce," or any other licensed American steam vessel, to compulsory pilotage unless she be proceeding "from a foreign port."

It is submitted that San Juan, Porto Rico, whence she was returning to her home port, New York, was not, upon June 25, 1900, a foreign port, but was a port of the United States; that, therefore, it is immaterial what adjective finally be applied to trade between Porto Rico and New York, whether it be held coasting trade or otherwise, for the reason that, prior to June 25, 1900, the port of San Juan, Porto Rico, became an American port.

Section 2119 of the consolidation act provides that: "All masters of (1) *foreign vessels* or (2) *vessels from a foreign port*, and all vessels sailing (3) *under registry* * * * shall take a licensed pilot."

Only three classes of vessels are thus subjected to compulsory pilotage:

(1) Foreign vessels.
(2) Vessels *from* a foreign port.
(3) Vessels "under registry."

The admissions in the record here are that the *Ponce* is (1) an American vessel and (3) not under registry, and (2) from the port of San Juan, Porto Rico.

Therefore, even waiving the point that trade between the United States and Porto Rico is coasting trade and waiving the rights of the *Ponce* under the prohibitory reservations in favor of coasting trade of both the New York pilotage act and the Federal act already discussed, yet, as she was at the times in question, neither (1) a foreign vessel,

being an American boat, nor (3) sailing "under registry," she could not be required to take a pilot under the affirmative provisions of said act, unless she was (2) "*from a foreign port.*"

In other words, the libellants, to make a case, must maintain, *first*, that the *Ponce* was not in the coasting trade, and, *second*, that San Juan was *at the times in question* a foreign port.

A port is a point or place at which vessels may enter or clear and at which foreign commerce may be carried on.

San Juan is a port of the United States.

A port may be generally described as the capital or executive center of a customs district where foreign goods and vessels may enter and clear.

See Revised Statutes, section 2767:

> § 2767. "The word 'port,' as used in this title, may include any place from which merchandise can be shipped for importation, or at which merchandise can be imported."

See also Revised Statutes, section 2771:

> "Vessels which are not vessels of the United States shall be admitted to unlade only at ports of entry established by law, and no such vessel shall be admitted to make entry in any other district than in the one in which she shall be admitted to unlade."

The ports of the United States were originally designated by statute. See Revised Statutes, section 2517 and following sections.

The entire United States coast is divided into collection districts by this and by the subsequent sections and the port of each designated.

Section 2591 is as follows:

> "There shall be in the Territory of Alaska one collection district, as follows: The district of Alaska, to comprise all the Territory of Alaska, in which Sitka shall be the port of entry.

The ports of Hawaii have also been made American ports by statute.

The Porto Rican act, section 4, prescribes as follows:

> "The Secretary of the Treasury shall designate the several ports and subports of entry in Porto Rico, and make all such rules and regulations, and appoint such agents as may be necessary to collect the duties and taxes authorized to be levied, collected, and paid in Porto Rico by the provisions of this act, and he shall fix the compensation and provide for the payment thereof of all such officers, agents, etc., as he may find it necessary to employ to carry out the provisions hereof."

Pursuant to such authority, the Secretary of the Treasury, on June 22, 1900, by duly executed instrument constituted the island of Porto Rico a customs collection district, and made San Juan in said island the port of entry in said district, and Ponce, Mayaguez, Arecibo, etc., subports of entry in said district of Porto Rico.

This document is known as circular 94, being customs document No 22305, and is printed at full length elsewhere in this brief.

By this action and designation, San Juan became a port of entry for the civilized world, and its collector of customs clears vessels of all nations from San Juan as he does from any other American port.

So far as its characteristics as a port is concerned, the port of San

Juan is as much an American port of entry, an American hailing port, and the head of an American collection district, as is the port of New York.

The organization of the port of San Juan as a port is a subdepartment of the United States Government just as much as the organization of the district court of the United States for that district is a subdivision of the United States Government. It is a United States port to exactly the same extent as the district court for the district of Porto Rico is a United States court; the same governmental action and authority which created the circuit court of the United States for the district of Porto Rico created the port; if one is a United States court, the other is a United States port.

If, then, it be a United States port it can not be foreign to any other American port.

Even if the New York statute had imposed compulsory pilotage on a vessel "from a foreign *country*" instead of "from a foreign *port*," the reasoning would not be altered. The commonwealth of Porto Rico is certainly a political subdivision of the United States, whether it be designated as a "territory," "colony," "province," or, to use an old English designation, a "plantation."

The political entity, the commonwealth of Porto Rico, is a manifestation of the supreme jurisdiction and authority of the United States. It is a body politic, a commonwealth or corporation created by the Government at Washington, to which certain powers, authorities, and functions of that Government at Washington are delegated and entrusted, other powers, authorities, and functions being reserved to the executive, the judicial, and the legislative branches of the home government. It is but a municipal subdivision; it is but a part of the body politic or corporate, to which belong as constituent members the various States within the limits of the Union, the interior Territories of the West, and the Territories of Alaska and Hawaii. The commonwealth of Porto Rico is a creation of the Federal Government; it is a United States corporation; it is in every sense a domestic political corporation of the United States.

The meaning of the word "foreign" in statutes relating to revenue and shipping has been construed by the courts in a number of cases, and has always been held to mean not only beyond the jurisdiction of the United States, but also within the jurisdiction of some other country.

In the case of *Eliza and Cargo* (2 Gallison, 4), it was held by Story, *J.*, that a vessel bound to meet another upon the high seas is not within chapter 129, section 1, of the act of July 6, 1812, providing that any vessel which should depart "for any foreign port or place without giving the bond prescribed shall be forfeited."

Justice Story said at page 7:

> "It is clear to my mind that a foreign port or place under the statute means a port or place exclusively within the sovereignty of a foreign nation.
>
> "Such has been the construction of the same words in the 3d section of the act of January 9, 1808, by the Supreme Court of the United States. Such has been the uniform construction of the district and circuit courts of this circuit in cases where words of similar import have been drawn into controversy."

And again, in *U. S. vs. Hayward* (2 Gall., 485), Justice Story said at p. 500:

> "By foreign ports, as the terms are here used (the nonimportation act, March 1, 1809), may be understood a port within the dominion of a foreign sovereign and without the dominion of the United States."

For other cases giving a similar meaning to the word "foreign," see: *Lack and Cargo* (1 Gall., 55); *Sally and Cargo* (Id., 56); *Adventure and Cargo* (1 Brock, 235); *Taber vs. U. S.* (1 Story, 1).

Chief Justice Marshall has spoken on this subject also. The expression "throughout the United States" was under discussion. He says:

> "Does this term designate the whole, or any particular portion of the American empire? Certainly this question can admit of but one answer: It is the name given to our great Republic, which is composed of States and Territories. The District of Columbia, or the territory west of the Missouri, is not less *within* the United States than Maryland or Pennsylvania," &c., &c. *Loughborough vs. Blake* (5 Wheat., 317).

Even had the *Ponce* sailed prior to May 1, 1900, when the Porto Rico act took effect, an interesting, and, it is believed, a sound argument could be made in support of the proposition that Porto Rico was no longer "foreign," but became a part of the United States immediately upon the exchange of ratifications of the peace treaty with Spain on April 11, 1899.

This contention will be raised in the customs cases.

But in view of the legislation by Congress in the Porto Rico act of April 12, 1900, entitled: "An act temporarily to provide revenue for Porto Rico and for other purposes," which act was in force at all times mentioned in the libel herein, such a discussion for the purposes of this case is purely academic.

The creation by Congress of a civil government for Porto Rico by officials sworn to "support" the Constitution of the United States is the most indubitable evidence that it is not a foreign country.

An examination of the Porto Rico act shows still more conclusively that Porto Rico is in no sense a foreign country.

Section 9 of the act which has already been referred to provides for "NATIONALIZATION" of all vessels owned by the inhabitants of Porto Rico * * * and for "the admission of the same to all the benefits of the coasting trade of the United States," and also for the regulation of "the coasting trade between Porto Rico and the United States." Section 14 provides that "the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws * * *."

Section 16 provides that "all judicial process shall run in the name of 'United States of America, ss: the President of the United States,' * * * and all officials authorized by this act shall before entering upon the duties of their respective offices take an oath to support the Constitution of the United States and the laws of Porto Rico."

The act further provides that the governor and the executive council shall be appointed by the President of the United States by and with the consent of the Senate, establishes district courts of the United

States therein, and provides that writs of error and appeals from the final decisions of the supreme court of Porto Rico shall be allowed in the same cases as from the supreme court of the Territories.

In short, the government is, with slight modification, the ordinary form of Territorial government with which this country has been for years familiar, and is analogous to the government of the less important of the British colonies.

Whether all the benefits of the Constitution extend to Porto Rico is immaterial here. Our laws, our jurisdiction, our dominion do extend over it, and it is therefore no longer foreign.

Decisions of the various departments of the Federal Government are uniform in holding that Porto Rico, since the enactment of the Porto Rico act, is not a foreign country.

The following is a decision just rendered by the Internal-Revenue Department:

"Treasury Decisions. Internal Revenue 252.

"TREASURY DEPARTMENT,
"OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
"*Washington, D. C., December 3, 1900.*

"SIR: I have to acknowledge the receipt of your letter of the 23d ultimo, in which you state that the First National Bank of Brooklyn has requested you to advise them what tax accrues upon a 10 days' sight draft drawn on a party in Porto Rico; whether under the requirements of the war-revenue act of June 13, 1898, this instrument should be regarded as a bill of exchange, inland, and stamped at the rate of 2 cents for each $100 or fractional part thereof, or as a bill of exchange, foreign, and stamped at the rate of 4 cents for each $100 or fractional part thereof.

"In reply, you are advised that *this office is of the opinion that Porto Rico is not a foreign country* within the meaning of the paragraph in Schedule A of the war-revenue act relating to bills of exchange, foreign, and that a 10 days' sight draft drawn in the city of Brooklyn on a person in the island of Porto Rico is not to be considered 'as drawn in, but payable out of the United States.' This instrument should be stamped at the rate of 2 cents for each $100 or fractional part thereof.

"Respectfully,

"JAMES C. WHEELER,
"*Acting Commissioner.*

"Mr. FRANK R. MOORE,
"*Collector First District, New York, N. Y.*"

(See Volume 3, Treasury Decisions No. 49.)

The Inspector of Immigration has also just decided that Porto Rico is not a foreign country, and that the New York and Porto Rico Steamship Company could land at the port of New Orleans a shipload of Porto Rican laborers imported under contract *via* the steamship *Arkadia*, and that they were not alien laborers subject to deportation under the alien contract labor law, and subsequent shipments of the same character are passing into New Orleans unmolested.

The libellants will doubtless rely on the opinion of Attorney-General Griggs, given to the Secretary of the Treasury, July 22, 1898,

that a vessel coming from Hawaiian ports after the annexation of Hawaii, *and before the act organizing a government for that island*, was still from "foreign ports" within the meaning of the tonnage laws, and the decision of Judge Townsend in *Goetze* v. *U. S.* (103 Fed. Rep., 72), holding that on June 6, 1899, Porto Rico was still a foreign country within the meaning of the tariff law.

That territory ceded to the United States becomes a part of it, on the exchange of ratifications, has been decided by the Supreme Court in the case of *Cross* vs. *Harrison*, (16 How., 164), and it seems impossible to counsel to reconcile that decision with *Goetze* vs. *U. S.* But Goetze *vs.* U. S. and the opinion of the Attorney-General above referred to are based upon the theory that the old relations between Hawaii and Porto Rico and the United States must be regarded as continuing for commercial purposes until Congress should determine what their exact organic relations are to be. They would be authorities in favor of holding the *Ponce* bound from a foreign port if the transaction in question had occurred prior to May 1, 1900, when the act of April 12, 1900, entitled "AN ACT TEMPORARILY TO PROVIDE REVENUE AND A CIVIL GOVERNMENT FOR PORTO RICO, AND FOR OTHER PURPOSES," went into effect. But as the offer of services by libellants was made after that act went into effect, these authorities are totally inapplicable, and the present relations of Porto Rico and the United States must be determined by the provisions of that act.

Indeed, *Goetze* vs. *U. S.* seems a direct authority for the proposition that Porto Rico is now in no respects foreign. Judge Townsend there says:

> "New territory is not brought under the Constitution by acquisition of the soil. * * * This is done by an incorporation of the inhabitants into the Union *or by an extension of our laws and institutions throughout the territory.*"

It is submitted that such extension of our laws and institutions had at the times in question here fully taken place.

"All statutory laws not locally inapplicable," our Federal courts, our system of Presidential appointment, with consent of the Senate, the official oath to support the Constitution of the United States—in short, every attribute of territorial government—had been conferred and was in existence after May 1, 1900, except a Delegate to Congress, for whom a commissioner was substituted.

It may be further said by appellants that goods from Porto Rico must pay a tariff at our ports. Waiving the question of the constitutionality of that part of the Porto Rican bill, it is submitted that the provision for a payment upon merchandise coming from Porto Rico of fifteen per cent of the duties collected from foreign importations of merchandise is by the express terms of the act only to provide revenue *for the island*, and can, at most, last but two years from the passage of the act, and may terminate any day a system of local taxation is devised by the Porto Rican legislature.

If this criterion be adopted it must be pretended that Porto Rico, *without any further act of Congress*, may become at any time, and must become in two years, domestic territory and yet is now a foreign country.

This is an absurdity.

Such foreignness as may still linger about Porto Rico is not sufficient to bring it within the fair meaning of the term "foreign" as used in

the pilotage act. Moreover, such a contention is particularly extraordinary when section 9 of the Porto Rico act specifically mentions trade with Porto Rico as "coasting trade" and prescribes that it shall be "regulated" as such.

The port is a port of the United States, the commonwealth is a political subdivision of the United States.

Therefore, the words of the New York act under which libellant claims fail to impose any obligation on the *Ponce* to take a pilot when bound from San Juan, since that has ceased to be a voyage "from a foreign port."

POINT IV.

An examination of the cases and decisions cited by appellant's counsel as opposed to the decision of Judge Brown, from which appellant appeals to this court, shows that they are based on facts and questions wholly irrelevant to the matter under discussion here.

The very exhaustive and learned argument of the counsel for the appellant is in brief as follows:

(1) They contend: The treaty of Paris which ceded Porto Rico to the United States provided that "the civil rights and political status of the native inhabitants * * * shall be determined by Congress."

They contend that Congress has not by legislation made the people of Porto Rico citizens of the United States; that, therefore, Porto Rico is still a foreign country, and the *Ponce* is a vessel from a foreign port.

Counsel for appellants, in striving to maintain these propositions argue that *Cross* vs. *Harrison* (16 How., 164), and various decisions of the Supreme Court of the United States which have held that the Constitution extended to newly acquired territory, were cases where the territory in question was either part of the original States, as the District of Columbia, or was French and Spanish territory taken under treaties which provided that the inhabitants of the territory should be citizens of the United States.

Waiving the question whether counsel for appellants are sound in this construction of these decisions, we submit that the question of citizenship is here immaterial. How can the fact that the natives of Porto Rico are not at once made *citizens* of the United States determine whether Porto Rico is a foreign country within the pilotage act of the State of New York?

If the United States is given the power of making them citizens, then Porto Rico must be a part of the United States or the power could not exist. We can only make citizens within our own territory.

The Indians of the West were never made citizens of the United States, but counsel has never heard that the West for that reason remained a foreign country.

San Juan is not a foreign port for the reasons fully set forth in Point III, *supra*, and counsel respectfully submit that appellants can point to no decision even hinting that territory over which Congress has assumed complete dominion, and in which Congress has set up a *complete territorial government*, is foreign soil.

Whether Porto Rican ports are *domestic* or *colonial* is immaterial here. The point is that they are not "foreign."

Before the Supreme Court of the United States is asked to hold that

Porto Rico is a foreign country, the provisions of the various treaties securing to each party the same rates of duties as to exports and imports given to any foreign country must be carefully considered.

For example:

The treaty with Great Britain of 1815, Article II, provides as follows:

> "No higher or other duties shall be imposed on the importation into the United States of any articles, the growth, produce, or manufacture of His Britanick Majesty's territories in Europe, and no higher or other duties shall be imposed on the importation into the territories of His Britanick Majesty in Europe of any articles the growth, produce, or manufacture of the United States than are or shall be payable on the like articles being the growth, product, or manufacture *of any other foreign country.*"

Similar conventions are in effect with other foreign nations.

Are 85 per cent of all the duties collected during the past two years to be refunded in order that we may establish the principle that Porto Rico is foreign territory?

There seems to be a dubious quagmire confronting this proposition.

Domestic interests are also imperilled by this contention.

The navigation laws of the United States, section 4347, as has been noted, protects the carrying trade "from one port of the United States to another port of the United States."

For the past year and a half foreign vessels have been excluded from trade between Porto Rico and the United States.

The appellee in this case has alone built and purchased, or caused to be built or purchased, six ocean-going American vessels to carry on this trade.

If, however, San Juan, Porto Rico, is not a port of the United States, any foreign vessel can trade between it and New York.

The trade is thrown open to every foreign tramp that is in search of a cargo and the investment made by this company and its affiliated interests of more than a million and a half of dollars is sacrificed.

(2) Appellants next contend that *coasting trade* means only "domestic trade carried on by vessels sailing along the coast of the United States." In support of this they quote the old New York case of *Steamboat Company* vs. *Livingston* (3 Cow., 747), already referred to, which describes coasting trade as "trade between different coasting districts or different places in the same district on the sea coast." The definition was correct when used, but is not now. This description of the class of trade, or group of facts which the words "coasting trade" then included, was immaterial to the decision of the case, though at the time when the United States possessed no outlying territory it was correct. For this reason that case is not the slightest authority for the proposition for which it is cited, and certainly is not a restriction on the future action of Congress.

Indeed the Chief Justice in that very case at page 747, in a passage already quoted, lays down the rule that the definitions of coasting trade are to be found in "*Acts of Congress.*" When there found they are absolutely definitive.

The English case, to which several others might be added, further relied on by appellants in support of their contention that coasting trade means trade "along the coast," is not in the least in point.

These English cases are all under acts of Parliament, which acts distinguish between ships employed in the coasting trade and ships from the isles of Guernsey, Jersey, and other islands near to the English coast. In other words, the statutes expressly designated ships which do not literally go close along the coast as engaged in some other kind of trade than coasting trade. Manifestly, such decisions can have no bearing on the present discussion, except to show that the *statute* is the source of classification in England as well as in America, and that coasting trade in each country is what the statute law indicates it to be.

(3) The third contention of the appellants is that the Porto Rico act only provides that *trade* shall be regulated, but does not purport to regulate *navigation*, and does not enact in express terms that *trade* with Porto Rico shall be coasting trade.

In answer to this last contention and to the entire position of the appellants, the following language from the opinion of the learned trial judge, in deciding this case below, seems absolutely final. It is as follows:

> "It is objected that the phraseology of the statute covers only *trade*, and does not include *navigation*, or the laws applicable to navigation. In the construction of a statute of this general character, however, *such a verbal distinction seems to me not well founded;* and inasmuch as the 'coasting trade between the United States and Porto Rico' can only be carried on by means of vessels, and the navigation of vessels, 'the provisions of law applicable to such trade,' in the language of section 9, must include the laws applicable to the navigation by which alone such coasting trade can be carried on. * * *
>
> "It is urged that section 9 does not expressly state that trade between Porto Rico and the United States shall be deemed or treated as 'coasting trade,' and that the word 'coasting' before the word 'trade' in the last sentence of section 9 is not an appropriate word, nor sufficient to indicate that such was the intent of Congress. It seems to me otherwise; and that *the designation of such trade as 'coasting trade' is as strong by necessary implication as a direct affirmance would be. For otherwise the whole provision, as far as I can see, would have no meaning.* The clause is an indirect affirmance of a 'coasting trade' to be established 'between Porto Rico and the United States;' it is that trade beween Porto Rico and the United States which is to be governed by the rules applicable to the great coasting districts of the United States; and any such trade that is possible between Porto Rico and the United States must necessarily include voyages like the present, which are, therefore, entitled to the same exemptions as the established great coasting districts of the United States.
>
> "Such has been the established construction and the practice under a similar statute respecting 'coasting trade' with Alaska for more than thirty years past. The identity of the phraseology on this subject in the acts as to Alaska and Porto Rico shows that Congress in framing section 9 had in view the Alaska statute, and must, therefore, have intended that the same construction and effect should be given to section 9 which the practice and usage for thirty years under the Alaskan statute had already established." (See decision of Judge Brown, district court of the United States for the southern district of New York.)

In the argument below great stress was laid upon the case of the *United States* vs. *Patten*, reported in 1 Holmes, 421, which decision discusses section 10 of the act of Congress of June 1st, 1872 (17 U. S. Statutes, 238), reenacted as sections 2513 and 2514 of the Revised Statutes.

> This act provides "that from and after the passage of this act all lumber * * * which may be necessary for the construction and equipment of vessels built in the United States for the purpose of being employed in the *foreign trade, including the trade between the Atlantic and Pacific ports of the United States*, and finished after the passage of this act, may be imported in bond * * * and no duties shall be paid thereon, provided the vessels receiving the benefit of this section shall not be allowed to engage *in the coastwise trade* of the United States more than two months in any one year, * * * and provided further that all articles of foreign production needed for the repair of American vessels engaged exclusively in foreign trade may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe."

It is to be noticed that there is no enactment that trade between Atlantic and Pacific ports is generically foreign trade, but that there is an enactment that vessels engaged in the foreign trade, including, for the purpose of this act only, trade between Atlantic and Pacific ports, shall have certain benefits as to duties.

The court properly held that for the purposes of this statute wherever the words "foreign trade" occurred the words of the first paragraph, "including trade between the Atlantic and Pacific ports of the United States," should be considered as repeated, and that for the purposes of this act the voyage between the Atlantic and Pacific should be considered not as a coastwise, but as a foreign voyage.

The Treasury Department has put the same construction on the act, the sections of which were copied verbatim into the Revised Statutes, constituting two sections thereof.

The counsel for appellant contended that in the revision the words "including trade between the Atlantic and Pacific ports of the United States" were omitted, as shown by section 2514 of the Revised Statutes. But on inspection it will be seen that §§ 2513 and 2514 contain the words "including trade between the Atlantic and Pacific ports of the United States" once, and once only, and that the same is true of the sections above cited from the act of June 1st, 1872.

There is no omission in this respect. Therefore the Treasury Department regulated the duties in accordance with the previous decisions in the case of *U. S.* vs. *Patten* (1 Holmes, 121).

So far from this case holding that this statute supplies a general definition of foreign trade and coastwise trade, the decision is to the effect that the words as used in the statute are not used in their general signification.

On page 424 of the decision the use of the words is discussed as follows:

> "The *foreign* trade in the first clause includes the trade between the Atlantic and Pacific ports of the United States. The *coastwise* trade in the first proviso as clearly excludes those ports. *The term 'foreign trade' in the first clause is used in a sense broader, and the term 'coastwise trade' in the proviso in a sense narrower than the* LITERAL *meaning of these terms.*" *U. S.* vs. *Patten* (1 Holmes, 424.)

The case, therefore, is distinctly an authority in rebuttal of appellant's contention, and not in its favor. It is an authority that foreign trade *in its literal sense* does *not* include trade from the Atlantic to the Pacific, and that coastwise trade *in its literal sense* does include trade from the Atlantic to the Pacific.

In other statutes coasting trade and coastwise trade are used in their ordinary significance, and some statutes specifically include trade between Atlantic and Pacific ports *eo nomine* as coasting trade.

For example, the act of June 9, 1874 (18 Stat., 64), provides that an act relating to shipping commissioners shall not apply "to sail or steam vessels engaged in the coastwise trade, except *the coastwise trade between the Atlantic and Pacific coasts.*"

And Revised Statutes of the United States, section 2999, provides for the appointment of inspectors of the customs, "with power to superintend the landing or shipping of all merchandise passing *coastwise between the ports of the United States on the Pacific and the Atlantic.*"

As has already been seen, the treaty with the Netherlands of August 26, 1852, Article IV, expressly defines the coasting trade as follows:

> "It being, moreover, understood that in the East Indian Archipelago of the Netherlands the trade from island to island is considered as coasting trade, and likewise in the United States the trade between their ports on the Atlantic and their ports on the Pacific."

In the argument below considerable stress was laid by appellant's counsel upon the distance from New York to Porto Rico as an argument against considering Porto Rican trade as coasting trade.

It is not as far by sea from New York to Porto Rico as it is from New York to Galveston.

Masters of vessels plying to and fro between San Juan and New York would be more familiar with the harbor than if plying from New York to Galveston.

Vessels from Key West to Porto Rico of course would be a still shorter time in transit.

Does counsel for appellant mean to say that a vessel from Key West to Porto Rico might be a coastwise vessel and a vessel from New York to Porto Rico not a coastwise vessel?

The argument of distance needs no further comment.

Appellant's counsel below argued that the latter provision of section 9 of the Porto Rican act (the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States) "has no bearing on the first clause thereof, but is an independent provision inserted for the purpose of regulating traffic in alcoholic and certain other commodities; and if the word 'coasting' had been omitted before the word 'trade,' the question at issue would not have been raised, although the meaning of the words would have been unchanged."

Appellant's counsel, on the other hand, called the attention of the court to the fact that the use of the words "foreign trade," followed by the description "including the trade between the Atlantic and the Pacific ports of the United States," was an adequate enactment that for the purposes of that statute trade between the Atlantic and the Pacific ports of the United States was foreign trade; yet in the same

breath, almost, he argues that the enactment commencing "the coasting trade between Porto Rico and the United States," etc., is not an adequate enactment that the trade described as coasting trade shall be coasting trade.

The counsel for appellant argued thus in the court below:

> "While the language used is 'coasting trade,' the bill does not enact that trade between the two countries *shall be* coasting trade. It does not purport to change the nature of the trade, but to regulate it in certain respects."

Appellant's counsel apparently did not realize that this line of reasoning was exactly the line of reasoning which was overruled in the case of *U. S.* vs. *Patten* (1 Holmes, 421), relied on by him, wherein it was held that if foreign trade was described as *including* Atlantic to Pacific trade, the same for the purposes of that act would be *included*, no matter what reasoning or what dictionaries were brought into court to support the opposite contention.

We have already cited cases showing that such words of statutory description are adequate legislation to create the condition described as existing.

The very brevity of the wording of the Porto Rico act compels the court to give to each word its full and logical meaning. No one word is meaningless. The use of the description "coasting trade" makes it such. The use of the words "shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States" enacts impliedly that Porto Rico shall be considered a great coasting district of the United States.

It has been also created a collection district.

Pursuant to the Porto Rico act of April 12, 1900, Porto Rico was constituted a customs collection district by the following action of the Treasury Department:

> "TREASURY DEPARTMENT, *June 22, 1900.*
>
> "*To collectors of customs and internal revenue and others concerned:*
>
> "In view of the provisions of the act of Congress, approved April 12, 1900, entitled 'An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes,' Porto Rico, as described in said act, is hereby constituted a customs collection district, with San Juan, in the island of Porto Rico, as the port of entry in said district, and Ponce, Mayaguez, Arecibo, Aguadilla, Humacao, Arroyo, and Fajardo as subports of entry in said district of Porto Rico, and customs officers shall be stationed at said subports, with authority to enter and clear vessels, receive duties, fees, and other moneys, and perform such other services and receive such compensation as in the judgment of the Secretary of the Treasury the exigencies of the customs service and commerce may require.
>
> "O. L. SPAULDING,
> "*Acting Secretary.*"

It is clear, therefore, that a vessel sailing from San Juan to the port of New York is simply sailing from one collection district of the United States to another collection district of the United States, from one duly constituted and designated American port to another, and that for all purposes of trade, navigation, and commerce there is no distinction between this voyage and the voyage between *any* two great coasting

districts or *any* two collection districts or any two ports of the United States.

Counsel for appellant has contended that the *Ponce*, sailing from San Juan to New York, is not bound by the regulations of the United States Government as to domestic trade.

In reply to this it is sufficient to refer again to the sections of the Revised Statutes included in the collection of navigation laws of the United States referring to coastwise steam vessels, and to quote, for instance, Revised Statutes, § 4371, under heading "Penalties for violation of coasting laws."

The penalties of § 4371, R. S., are imposed upon "vessels found trading" between district and district or between different places in the same district." See also the regulation requiring licensed pilots in all coastwise seagoing steam vessels. (U. S. R. S., § 4401 and § 4404.) These are some of the regulations of the coastwise trade to which vessels sailing from San Juan to New York are subject.

To say that this last clause of section 9 "is an independent provision inserted for the purpose of regulating traffic in alcoholic and certain other commodities, and if the word 'coasting' had been omitted before the word 'trade' the question would not have been raised, although the meaning of the words would have been unchanged," seems to be discarding the only, the evident, the inevitable meaning of the clause in favor of one incidental effect of its provisions. Incidentally it does regulate traffic in alcohol. Actually, it regulates all other forms of trade and navigation between Porto Rico and the United States.

It seems, therefore, that the Commissioner of Navigation from every point of view properly decided that the case of *U. S.* vs. *Patten* (1 Holmes, 42, and Treasury Decisions 2771 and others), cited in opposition to the licensing of vessels plying between New York and Porto Rico, had nothing to do with the pending question.

Vessels bound from New York *via* Cape Horn to California have always sailed under registry, because they are obliged to put into foreign ports for food and water, and therefore must be registered.

As has been shown, however, this carrying trade is none the less coastwise.

Vessels bound for the Hawaiian Islands usually sail under registry, for the reason that they also touch at foreign ports.

Vessels bound for Porto Rico, even though engaged in the coastwise trade, would sail under registry if they expected to touch at any foreign port before returning to the United States; but even if sailing under registry, the voyage from New York to Porto Rico, to San Francisco, to Hawaii, would be none the less a coastwise voyage, provided only that the cargo was shipped from one American port to the other. (See Treasury Decision 222001, May 3, 1900.)

> "Trade between the United States and Hawaii will be carried on under registry *or* in enrolled *and* licensed vessels, or in licensed vessels of the United States only."

There is no prohibition against a registered American vessel engaging in the coastwise trade, but a licensed vessel is prohibited under penalty of forfeiture from going on a foreign voyage.

The appellant's contentions, therefore, seem one by one to fail, if all the facts and circumstances of the decisions and statutes cited by appellant's counsel are clearly presented and considered.

POINT V.

None of the points contended for by the counsel for the appellant answers the convincing arguments of Judge Brown's decision.

Judge Brown, in his opinion, lays down the following proposition:

"1. The effect of the * * * acts of Congress is to exempt all steam vessels sailing under a license and employed in the coastwise trade from the pilotage laws of the States, while other vessels remain subject to the State laws. * * * No pilotage can be claimed under the provisions of section 2119 of the New York statute * * * if the vessel was, in fact, 'employed in the coasting trade;' nor, second, unless she was 'from a foreign port.'

"The primary and ordinary meaning of the term foreign is belonging to or relating to another sovereignty or dominion, as in the expression 'foreign law,' 'foreign commerce,' 'foreign ministers,' 'foreign territory.'"

"In this sense of the word it is evident that Porto Rico, since the cession of the island by Spain to the United States, is not a foreign port, as it is subject solely to the sovereignty and dominion of this country.

"2. * * * The act of Congress of April 12, 1900, * * * in pursuance of the terms of the treaty, and acting under its constitutional power, shows so clear an intention to alter the previous conditions and to assimilate trade and navigation between Porto Rico and the United States to the ordinary coasting trade between ports of the United States, that pilotage can not now be claimed in the one case more than in the other. * * *

"No doubt the words 'coasting trade' as thus construed are extended beyond their original and primary significance, which meant trade along the contiguous line of coast of the United States, but the whole subject being within the power of Congress it is competent for Congress to extend the privileges and restrictions of that trade as it shall see fit. * * *

"3. The decisions of the Commissioner of Navigation, under the direction of the Secretary of the Treasury, are official decisions, entitled to much weight, since he is an officer 'specially charged with the decision of all questions relating to the issue of registers, enrollments, and licenses of vessels.'" (See Appendix.)

Judge Brown, therefore, concludes that the enrollment and coasting license under which the *Ponce* proceeded were properly granted by the Commissioner of Navigation, duly authorized by Congress to decide such questions, and that she therefore had all the privileges of the coasting trade, among others exemption from State pilotage fees.

We can not see that Judge Brown's argument has been in any way impugned by the counsel for the appellant, and it is submitted that it stands to-day absolutely irrefutable.

POINT VI.

It is respectfully submitted that the libel was rightfully dismissed, with costs, for the following reasons:

1. That Porto Rican ports have not been foreign ports since May 1st, 1900.

2. That vessels engaged in trade between Porto Rican ports and other ports of the United States are engaged in the coasting trade in the sense in which those words are used in the statutes of the State of New York regulating pilotage.

3. That vessels engaged in trade between Porto Rican ports and other ports of the United States are coastwise steam vessels in the sense in which those words are used in section 4444 of the Revised Statutes of the United States.

WILLIAM EDMOND CURTIS,
Proctor for respondent-appellee,
30 Broad street, Borough of Manhattan, New York City.

F. KINGSBURY CURTIS,
Of Counsel.

APPENDIX.

OPINION.

United States district court, southern district of New York.

JOSEPH BIGLEY
against
THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

CHRISTIAN HUUS
against
SAME.

THOMAS TORGESON
against
GEORGE T. HAY.

In admiralty. Pilotage. Foreign port.

Lindsay, Kremer, Kalish & Palmer, for libellants.

Curtis, Mallet-Prevost & Colt, for the New York and Porto Rico Steamship Company.

Cowen, Wing, Putnam & Burlingham, for Hay and others:

BROWN, J.:

In the above three libels pilotage dues are claimed for services offered and rejected as follows:

1. June 2, 1900, from the steamship *Ponce* outward bound from New York to Porto Rico, $60.06.

2. June 25, 1900, same steamer inward bound from Porto Rico to New York, $74.34.

3. July 24, 1900, for the schooner *O. F. Whittier* inward bound from San Juan to Porto Rico, $37.54.

From the agreed statement of facts it appears that the vessels were all American vessels sailing under coasting licenses duly issued since the act of April 12, 1900 (31 St. L., ch. 19, sec. 9, p. 79); and it is agreed that the libellants are entitled to the pilotage dues above specified, provided that the vessels at the above dates were bound to or

from a "foreign port" and were not "engaged or employed in the coasting trade."

1. Pilotage fees, as regulations of commerce, are wholly subject to the Constitution and laws of the United States. By section 4235 of the United States Rev. Statutes, embodying the provisions of the act of August 7, 1789, it is enacted that "until further provision is made by Congress all pilots * * * in the ports of the United States shall continue to be regulated in conformity with the law of the States."

By section 4401 it is enacted that every coastwise seagoing steam vessel of the United States shall "when under way, excepting on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats."

By section 4443 the master or mate may also be licensed as a pilot; and by section 4444 the States are forbidden to require any other license in addition to those issued by the United States, or to impose any other regulation which shall impede such pilots from the performance of their duties. The same section also further provides:

> "Nor shall any pilot charges be levied by any such (State) authority upon any steamer piloted as provided by this title. Nothing in this title shall be construed to annul or affect any regulation established by the laws of any State requiring vessels entering or leaving a port of any such State, other than coastwise steam vessels, to take a pilot duly licensed by the laws of such State."

The effect of the above acts of Congress is to exempt all steam vessels sailing under a license and employed in the coastwise trade from the pilotage laws of the States, while other vessels remain subject to the State laws.

By section 2119 of the New York consolidation act (1882) relating to pilotage, it is provided:

> "No master of any vessel navigated under a coasting license and employed in the coasting trade by way of Sandy Hook shall be required to employ a licensed pilot when entering or departing from the harbor of New York. * * *
>
> "All masters of foreign vessels and vessels from a foreign port, and all vessels sailing under registry bound to or from the port of New York by the way of Sandy Hook, shall take a licensed pilot. * * *
>
> "This section shall not apply to vessels propelled wholly or in part by steam owned or belonging to citizens of the United States and licensed and engaged in the coasting trade."

Although the maintenance of a body of skillful pilots is regarded as a matter of public policy in the interests of commerce, and though the laws in regard thereto are to be construed liberally for their benefit (*Ex parte McNeil*, 13 Wal., 236; *Gillespie* v. *Winberg*, 4 Daly, 318, 325), still no suit can be maintained for such fees, except in accordance with the statutory provisions applicable to the specific case. As each of these vessels is a domestic vessel and was navigated under a coasting license of the United States, no pilotage can be claimed under the provisions of section 2119 of the New York statute above quoted, if the vessel was in fact "employed in the coasting trade;" nor, second, unless she was "from a foreign port."

2. The primary and ordinary meaning of the term "foreign" is, "belonging to or relating to another sovereignty or dominion," as in the expressions "foreign law," "foreign commerce," "foreign ministers," "foreign territory." In the case of *The Eliza* (2 Gal., 4, 7; 6 Fed. Cas., 434), Story, J., says:

> "It is clear to my mind that a foreign port or place under the statute means a port or place exclusively within the sovereignty of a foreign nation. Such has been the uniform construction," &c.

In *United States* v. *Hayward* (2 Gal., 485, 500; Fed. Cas., 15336), he says:

> "By foreign ports, as the terms are here used, may be understood a port within the dominion of a foreign sovereign and without the dominion of the United States."

See also *The Lark* (1 Gal., 55; Fed. Cas., 8090); *The Sally* (1 Gal., 58; Fed. Cas., 12257); *The Adventure* (1 Brock, 235; Fed. Cas., 93); *Taber* v. *United States* (1 Story, 1; Fed. Cas., 13722); *The Loughborough* v. *Blake* (5 Wheat., 317).

In this sense of the word, it is evident that Porto Rico, since the cession of the island by Spain to the United States, is not a foreign port, as it is subject solely to the sovereignty and dominion of this country.

By the treaty with Spain of April 11, 1899 (30 St. L., p. 1754, art. 2):

> "Spain ceded to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones."

Article 9 of the same treaty provides:

> "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress."

The term "foreign" is familiarly used also in a more restricted sense in our interstate law in such phrases as "foreign corporation," "foreign divorce," "foreign assignment," "foreign judgment," &c. But the word, even in this use of it, still retains its primary significance and refers to the independent jurisdiction and authority of the several States over the subject-matter referred to. In the same sense vessels belonging to citizens of another State are often termed "foreign vessels," and are treated as such in the Federal courts in the application of the maritime law as respects maritime liens for work, materials, and supplies; and, conversely, supplies furnished a vessel in a different State from that of her owner's residence, *i. e.*, not in the home port, are treated as supplied in a "foreign port." This designation of ports of other States as "foreign ports" as respects maritime liens originated in colonial times, when the colonial governments were independent of each other; and the law has remained unchanged in that regard between the States since the union under the Constitution. But the words "a foreign port" in the New York pilotage statutes are evidently not used in this restricted sense, and do not embrace ports of any of the States. For interstate navigation is embraced in the "coasting trade," in which pilotage charges are expressly excluded.

When the New York statute was enacted, however, it evidently

applied to vessels bound to or from Porto Rico, and so continued, at least until the cession to us by Spain; and it is urged that until the laws applicable to Porto Rico were changed by Congress the liability to pay pilotage remained as before. No doubt where territory is acquired by conquest or by treaty the laws existing among the people of the territory in the absence of treaty stipulations continue in force until altered by the new sovereign. Otherwise, until the new sovereign should act, the territory would be without any law at all. Most of our acquisitions by treaty have contained provisions securing certain rights to the people of the territory. By the treaty with Spain all these rights were expressly left to the action of Congress. Until Congress acted, therefore, and except as modified through the military power, the law of the internal relations, at least of the people of Porto Rico, remained as before, and it may be that their external relations as respects this country in matters of navigation and commerce also remained the same. (See *Goetze* v. *United States*, 103 Fed., 72.)

3. I do not find it necessary, however, to determine this question, since the act of Congress of April 12, 1900 (31 St. L., ch. 19, sec. 9, p. 79), in pursuance of the terms of the treaty, and acting under its constitutional power, shows so clear an intention to alter the previous conditions, and to assimilate trade and navigation between Porto Rico and the United States to the ordinary coasting trade between ports of the United States, that pilotage can not now be claimed in the one case more than in the other. That act provides for a government of the island, not only in its internal relations, but also as respects trade and commerce. The whole machinery of a new government was provided for; officers, executive and judicial, were to be appointed, and oaths of fidelity to the United States to be exacted; ports of entry were established and revenue for necessary expenses to be collected by customs duties; vessels of the Porto Ricans were allowed to become nationalized, and by necessary implication from the provisions of section 9 the rules and regulations of our domestic coasting trade were designed to be made applicable to trade and commerce between the United States and Porto Rico. The act is entitled—

"An act temporarily to provide revenues and a civil government for Porto Rico and for other purposes."

Section 9, having special reference to trade and commerce with this country, provides as follows:

"SEC. 9. That the Commissioner of Navigation shall make such regulations, subject to the approval of the Secretary of the Treasury, as he may deem expedient for the nationalization of all vessels owned by the inhabitants of Porto Rico on the eleventh day of April, eighteen hundred and ninety-nine, and which continued to be so owned up to the date of such nationalization, and for the admission of the same to all the benefits of the coasting trade of the United States; and the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States."

The great coasting districts of the United States are established by section 4348 of the Revised Statutes. The first and second districts embrace the seacoast and navigable rivers from the eastern limit of

the United States to the Rio Grande; and the evident intention of section 9, as it seems to me, is to extend to and make applicable the privileges and the restrictions of the coasting trade of the United States to trade and navigation between the United States and Porto Rico, the same as if they formed contiguous territory.

It is objected that the phraseology of the statute covers only trade and does not include navigation or the laws applicable to navigation. In the construction of a statute of this general character, however, such a verbal distinction seems to me not well founded; and inasmuch as the "coasting trade between the United States and Porto Rico" can only be carried on by means of vessels and the navigation of vessels, "the provisions of law applicable to such trade," in the language of section 9, must include the laws applicable to the navigation by which alone such coasting trade can be carried on.

No doubt the words "coasting trade" as thus construed are extended beyond their original and primary significance, which meant trade along the contiguous line of coast of the United States. But the whole subject being within the power of Congress, it is competent for Congress to extend the privileges and restrictions of that trade as it shall see fit; and the only question is whether that extension was intended in this act. Upon the acquisition of Alaska the same terms were used and in the same manner for the extension of the "coasting trade" between the United States and that Territory far beyond any contiguous coast line of the United States (Act July 27, 1868, Rev. St., sec. 4358), and in the act of April 20, 1900, to provide a government for the Territory of Hawaii (31 St. L., 141, 161, ch. 339, sec. 98) there is also provision for the "coasting trade between the Hawaiian Islands and any other portion of the United States," in the same language that is employed in the last clause of section 9. This extended use of the words "coasting trade" was already familiar. Numerous decisions of the Commissioner of Navigation as respects trade and navigation by American vessels between those Territories and the United States have, moreover, held such trade to be a part of the coasting trade of the United States, entitling the vessels to sail under enrollments and licenses with the privileges and exceptions attaching thereto (6106, Jan. 8, 1884; also Dec. 5, 618, 18859, 19364, 22201, May 3, 1900), and the same has been ruled by the Commissioner with regard to trade with Porto Rico since the act of April 12, 1900, by Treasury decision 22232, May 16, 1900. It was under these rulings that the registers of these vessels were surrendered and coasting licenses taken out.

The decisions of the Commissioner of Navigation under the direction of the Secretary of the Treasury are official decisions entitled to much weight, since he is an officer "specially charged with the decision of all questions relating to the issue of registers, enrollments, and licenses of vessels" (act of July 5, 1884, 1 Supp. Rev. St., p. 46).

His decisions on these points are the more important from the fact that by section 4337 of the Revised Statutes it is enacted that—

> "If any vessel enrolled or licensed shall proceed on a foreign voyage without first giving up her enrollment and license * * * and being duly registered by the collector, such vessel and the merchandise so imported therein shall be liable to seizure and forfeiture."

The distinction, therefore, between foreign voyages, which can be made only by registering the vessel, and the coastwise trade, in which vessels may be navigated under license, is vital. If the voyages between Porto Rico and New York which these vessels were making under license, in accordance with the Commissioner's decisions, were foreign voyages, the vessels and their cargoes were liable to seizure, to forfeiture for sailing under license instead of being registered.

It is urged that section 9 does not expressly state that trade between Porto Rico and the United States shall be deemed or treated as "coasting trade," and that the word "coasting" before the word "trade" in the last sentence of section 9 is not an appropriate word, nor sufficient to indicate that such was the intent of Congress. It seems to me otherwise and that the designation of such trade as "coasting trade" is as strong by necessary implication as a direct affirmance would be; for otherwise the whole provision, as far as I can see, would have no meaning. The clause is an indirect affirmance of a "coasting trade" to be established "between Porto Rico and the United States;" it is that trade between Porto Rico and the United States which is to be governed by the rules applicable to the great coasting districts of the United States; and any such trade that is possible "between Porto Rico and the United States" must necessarily include voyages like the present, which are therefore entitled to the same exemptions as the established great coasting districts of the United States. Such has been the established construction and the practice under a similar statute respecting "coasting trade" with Alaska for more than 30 years past. The identity of the phraseology on this subject in the acts as to Alaska and Porto Rico shows that Congress in framing section 9 had in view the Alaska statute and must, therefore, have intended that the same construction and effect should be given to section 9 which the practice and usage for 30 years under the Alaskan statute had already established.

For the above reasons I think these vessels were not liable to pilotage charges, and the libels must be dismissed with costs.

Nov. 10, 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

CHRISTIAN HUUS, LIBELANT, APPELLANT,

against

NEW YORK AND PORTO RICO STEAMSHIP COMPANY, RESPONDENT, APPELLEE.

APPENDIX FILED BY RESPONDENT, APPELLEE.

WILLIAM EDMOND CURTIS,
Proctor for Appellee,
30 Broad Street, New York City.

F. KINGSBURY CURTIS,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

CHRISTIAN HUUS, LIBELANT, APPELLANT, AGAINST NEW YORK AND PORTO RICO STEAMSHIP COMPANY, RESPONDENT, APPELLEE.

APPENDIX II. FILED BY RESPONDENT, APPELLEE.—FIRST UNITED STATES STATUTE AS TO COASTING TRADE.

AN ACT FOR REGISTERING AND CLEARING VESSELS, REGULATING THE COASTING TRADE, AND FOR OTHER PURPOSES.

September 1, 1789 (1 U. S. Stat., p. 69).

Section 22 defines the vessels entitled to coasting license as "employed between district and district."

SEC. 23. "That the master, commander, or owner of every ship or vessel of the burden of 20 tons or upwards to be employed in trade between different districts of the United States * * * having a certificate of registry or enrollment as herein directed shall * * * be entitled to receive a license to trade between the different districts in the United States."

NOTE.—The collection districts had already been established by Chapter V of the acts of first session of Congress, and by the act of March 2, 1799 (1 U. S. Stat., pp. 637, 638, 639), the districts and ports in the Northwest Territory were added, the designation of a number of the districts and most of the ports being left to the President.

The act of the first session of Congress (1 U. S. Stat., p. 69, *supra*) regulating coasting trade and the license was amended by the act of 1793 (now a part of the Revised Statutes) so as to require a coasting license both for "trading between district and district *or between different places in the same district*," thus extending its scope to all trade between any two ports or places of the United States. (See § 4371, Rev. Stat. of U. S.)